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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**IN RE GOOGLE PLAY STORE
 ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al.,
 Case No. 3:20-cv-05671-JD

In re Google Play Consumer Antitrust Litig.,
 Case No. 3:20-cv-05761-JD

State of Utah et al. v. Google LLC et al.,
 Case No. 3:21-cv-05227-JD

Match Group, LLC et al. v. Google LLC et al.,
 Case No. 3:22-cv-02746-JD

Case No. 3:21-md-02981-JD

**GOOGLE'S ADMINISTRATIVE
 MOTION TO FILE UNDER SEAL
 MATERIALS SUBMITTED IN
 CONNECTION WITH DEFENDANTS'
 OMNIBUS MOTIONS *IN LIMINE* AND
 PLAINTIFFS' RESPONSES THERETO**

Judge: Hon. James Donato

INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, and Paragraphs 25-30 of this Court's Standing Order for Civil Cases, Google Defendants ("Google") respectfully move the Court to seal portions of Plaintiffs' Oppositions and supporting documents submitted in connection with Defendants' Omnibus Motions *in Limine* Nos. 1-7 and Plaintiffs' Responses Thereto [MDL Dkt. No. 640]. This Administrative Motion to File Under Seal is supported by the Declaration of Christian Cramer ("Cramer Decl.") and the Proposed Order submitted herewith and is submitted pursuant to Civil Local Rule 79-5(c).

LEGAL STANDARD

The Ninth Circuit holds that sealing is appropriate where the "party seeking to seal a judicial record" demonstrates "compelling reasons" that outweigh the "general history of access and the public policies favoring disclosure." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (quotation marks omitted). Compelling reasons may exist where, by way of example, the material to be disclosed includes "trade secrets,"¹ "confidential contracts,"² "contract negotiations,"³ "long-term financial projections,"⁴ discussions of business strategy,"⁵ "business information that might harm a litigant's competitive standing,"⁶ or personally identifiable information.⁷ Moreover, public release of "detailed financial information" can implicate a "significant interest" of a party because it could lead to competitive harm, such as ceding "an advantage in contract negotiations." *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727

¹ *Kamakana*, 447 F.3d at 1179.

² *Fed. Trade Comm'n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2019 WL 95922, at *3 (N.D. Cal. Jan. 3, 2019).

³ *Id.*

⁴ *Krieger v. Atheros Commc'ns, Inc.*, No. 11-CV-00640-LHK, 2011 WL 2550831, at *1 (N.D. Cal. June 25, 2011).

⁵ *Id.*

⁶ *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598-99 (1978)).

⁷ Fed. R. Civ. P. 5.2; *Snapkeys, Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1951250, at *3 (N.D. Cal. May 14, 2021); *Sameer v. Khera*, No. 117CV01748DADEPG, 2018 WL 4772035, at *1 (E.D. Cal. Oct. 1, 2018); *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003); *U.S. ex rel. Lockyer v. Hawaii Pac. Health*, No. CIV. 04-00596 ACK-LE, 2007 WL 128853, at *1 (D. Haw. Jan. 10, 2007).

1 F.3d 1214, 1225 (Fed. Cir. 2013) (there are “compelling reasons” to seal if disclosure would create
2 an “advantage in contract negotiations”).

3 ARGUMENT

4 As the Ninth Circuit has stated, “[s]ecrecy is a one-way street: Once information is
5 published, it cannot be made secret again.” *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th
6 Cir. 2008). Recognizing that there is a presumption in favor of access to court papers, Google
7 focuses this narrow sealing request on five specific, highly sensitive areas categories of non-public
8 information. These categories of confidential materials include: (a) specific deal terms (price and
9 nonprice) of agreements related to Google’s Search product with non-parties that the plaintiffs in
10 this litigation have not challenged and thus have marginal relevance (if any), (b) specific deal
11 terms (price and nonprice) of contracts with non-parties, (c) non-public financial information, (d)
12 details of negotiations and negotiation strategies with non-parties, and (e) personally identifiable
13 information (“PII”). Ninth Circuit courts have consistently held that these categories of
14 confidential, non-public information may be sealed, pursuant to the “compelling reasons”
15 standard. *See, e.g., Baird v. BlackRock Institutional Tr. Co.*, 403 F. Supp. 3d 765, 792 (N.D. Cal.
16 2019) (“Courts have found that ‘confidential business information’ in the form of ‘license
17 agreements, financial terms, details of confidential licensing negotiations, and business strategies’
18 satisfies the ‘compelling reasons’ standard.”) (citation omitted); *In re Electronic Arts, Inc.*, 298 F.
19 App’x 568, 569 (9th Cir. 2008) (protecting competitive terms of a license agreement “which
20 plainly falls within the definition of ‘trade secrets’” because it provides “an opportunity to obtain
21 an advantage over competitors who do not know or use it”); *Milliner v. Bock Evans Fin. Counsel,*
22 *Ltd.*, No. 15-cv-01763-JD, 2020 WL 1492692, at *2 (N.D. Cal. Mar. 27, 2020) (permitting sealing
23 of “highly negotiated agreement” that would “expose [litigant] to competitive harm” if publicly
24 disclosed); *Johnstech Int’l Corp. v. JF Microtechnology SDN BHD*, No. 14-cv-02864-JD, 2016
25 WL 4091388, at *2–5 (N.D. Cal. Aug. 2, 2016) (finding “compelling reasons” to seal, *inter alia*,
26 “product-specific customer data,” “detailed sales information for customers that could be used to
27 the company’s competitive disadvantage,” “competitive intelligence,” and “customer-specific

sales data”); *Ovonic Battery Co., Inc. v. Sanyo Elec. Co., Ltd.*, No. 14-cv-01637-JD, 2014 WL 2758756, at *2 (N.D. Cal. June 17, 2014) (“Our circuit allows parties to seal pricing terms, royalty rates, and guaranteed minimum payment terms found in a licensing agreement even under the ‘compelling reasons’ standard because that business information could ‘harm a litigant’s competitive standing.’”) (quoting *Electronic Arts*, 298 F. App’x at 569). Courts in the Ninth Circuit have also consistently held that personally identifiable information, such as home addresses, birth dates, telephone numbers, and email addresses and personnel records and employment information should be shielded from public disclosure. *See, e.g.*, Fed. R. Civ. P. 5.2; *Snapkeys*, 2021 WL 1951250, at *3 (granting Google’s motion to file under seal personally identifiable information of its current and former employees, including their email addresses and telephone numbers); *Sameer*, 2018 WL 4772035, at *1 (holding that Plaintiff had improperly failed to properly redact home addresses and birthdays from the second amended complaint); *Foltz*, 331 F.3d at 1137 (9th Cir. 2003); *Hawaii Pac. Health*, No. CIV. 04-00596 ACK-LE, 2007 WL 128853, at *1 (D. Haw. Jan. 10, 2007).

As discussed in detail in the declaration herewith, public disclosure of this information will cause severe and irreparable harm to not only Google’s business relationships and its competitive position, but also that of Google’s business partners—who are not parties to this lawsuit. Similarly, the PII of Google’s employees (including their compensation and email addresses) is highly sensitive information, outweighing any public interest in disclosure. The following examples are illustrative.

- **Specific Deal Terms of Contracts with Non-Party That Have Marginal Relevance.** As described in the Cramer Decl. (*see, e.g.*, Paragraph 20), Exhibit 5 to the Even Declaration includes commercially sensitive and non-public negotiated terms of Google’s Search-related agreements with non-party Samsung. The plaintiffs in this litigation have not challenged this agreement. Recognizing the harm that public disclosure of this sensitive and highly negotiated agreement would cause Google and its business partners, a federal court hearing a trial concerning

these agreements has ordered the court sealed when the terms of these agreements are discussed by the parties and/or witnesses. *See US et al. v. Google LLC*, 1:20-cv-03010-APM (D.D.C. Sep. 21, 2023), Trial Transcript at 2177:10-2178:10 (“THE COURT: So then let's talk about the next Apple issue, and that's what we need to do in closed session[.]”).

- **Google’s Prospective and Current Financial Data.** As described in the Cramer Decl. (*see, e.g.* Paragraphs 33, 38, 39, 65, and 66), Exhibits 7, 9, and 12 to the Even Declaration and Plaintiffs’ Opposition to Google’s Motion *in Limine* No. 5 include information that reflects and is calculated from internal, non-public Google Play financial data that is current and/or prospective in nature. Google spends significant resources compiling and maintaining this valuable data, which is non-public, and if revealed to competitors and potential business counterparties, could be used to disadvantage and cause Google competitive harm by giving competitors insight into confidential Google financial information. Further, this information reflects sensitive, highly confidential characterizations by Google's internal business teams that, if revealed, could be referenced by potential counterparties in negotiations with Google to gain an unfair advantage against Google.
- **Details of Negotiations and Negotiation Strategies with Non-Parties.** As described in the Cramer Decl. (*see, e.g.* Paragraphs 17, 18, 24, 25, 37, 41, 44, 46), Exhibits 4, 5, and 9 to the Even Declaration include information that reflects Google's non-public, competitively sensitive, and current internal information, including strategic analysis about dealings with certain counterparties. If disclosed, this information could cause Google harm by giving competitors key insights into Google's business strategy with respect to those counterparties, and competitors could adjust their own business strategies or adopt similar practices as a consequence.

- **Personally Identifiable Information.** As described in the Cramer Decl. (*see, e.g.*, Paragraph 10, 11, 13, 34), Exhibits 2, 3, and 8 to the Even Declaration and Plaintiffs' Opposition to Google's Motion *in Limine* No. 5 contain personally identifiable information and the compensation of current or former Google employees. These employees have a reasonable expectation of privacy that would be infringed upon if this information were to be made public.

CONCLUSION

For the foregoing reasons, Google respectfully requests that the Court seal the material identified in the accompanying Declaration of Christian Cramer.

Dated: October 5, 2023

Respectfully submitted,
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